IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 598 OF 2005

IN

SUIT NO. 252 OF 2005

Sudhir G. Baraskar .. Plaintiff.

vs.

Mangalam Developers

& Ors. .. Defendants.

Mr. Pankaj Sawant i/by M.V. Gopal Krishna

for plaintiff.

Mr. Abhay Patki i/by S.D. Rasal

for Defendants 1 & 2.

Mr. P.R. Hegde for defendant nos. 4 to 7.

CORAM : S.U.KAMDAR, J.

DATE : 20th February, 2006.

P.C.

. The present suit is filed on a so called confirmation letter dated 29.9.1997. Admittedly two cheques for Rs. 10,75,000/- each given are not encashed though they are of 1997. However, the learned counsel for the plaintiff states that there has been a part payment of 15,000/- and Rs. 20,000/- by two cheques dated 10.9.1999 and

30.11.2001. He contends that for the aforesaid reason the suit is in time. I am of the view that this is not a case where the plaintiff is entitled to any order on the present summons for judgement. Admittedly, the two cheques are lying with the plaintiff but are not encashed on the pretext that the defendant has asked not to encash the cheques. The cheques are of as far back as 1997 and the suit is not based on the dishonoured cheque. For claiming the amount thereunder after almost seven years the suit is being filed by relying upon the aforesaid part payment. Even if part payment is taken into consideration the suit is filed beyond the time of limitation. In that light of the matter, I am of the view that triable issue arises. Unconditional leave granted to the defendant to defend the suit.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.